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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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JAMES R. RYAN, PETER BAZINET and WILLIAM  
MILLER, Petitioning Creditors,

Appellants,

vs.

HERMAN MURPHY,

Appellee

In the Matter of HERMAN MURPHY, Bankrupt.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Northern District of California,  
First Division.

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Filed

AUG 26 1915

F. D. Monckton,  
Clerk.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names of Attorneys.**

DANIEL O'CONNELL, Esq., Attorney for Petitioning Creditors.

Messrs. MASTICK & PARTRIDGE, Attorneys for Alleged Bankrupt.

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UNITED STATES OF AMERICA,

*District Court of the United States, Northern District of California.*

Clerk's Office.

No. 8196.

In the Matter of HERMAN MURPHY,

Involuntary Bankrupt.

**Praeceptum [for Transcript of Record on Appeal to U. S. Circuit Court of Appeals].**

To the Clerk of said Court.

Sir: Please issue in the form in accordance with equity rules 75 and 76 of the Supreme Court of the United States and the annexed statement of the record in this proceeding to be incorporated into the Transcript on Appeal to the U. S. Circuit Court of Appeals, and which comprises all the material allegations and parts of the testimony of the witnesses stated in narrative form and excludes the formal and immaterial parts of all exhibits, documents, records, files and other papers used in said case and not essential to the questions presented by the Appeal, being a simple and condensed statement of the material portions of the following:

1. Creditors' petition.

2. Demurrer to that petition.
3. Order overruling the demurrer.
4. Answer of Herman Murphy to the petition.
5. Order referring to Referee in Bankruptcy.
6. The report of the Referee in Bankruptcy in full.
7. The exceptions to that report in full. [1\*]
8. The opinion and decisions of the U. S. District Judge on that report and those exceptions in full.
9. Appeal to U. S. Circuit Court of Appeals in full.
10. Asssignment of errors in full.
11. Portions of testimony of James A Johnston and his exhibits admitted in evidence before Hon. M. T. Dooling, U. S. District Judge, on hearing exceptions to report of the referee.
12. Portions of testimony of William Miller, R. V. Whiting, G. A. Lavender, J. P. Williams, Herman Murphy, Ella M. Murphy, C. E. King, Daniel O'Connell, H. V. D. Johns, A. B. Catheart, L. A. Myers, and substance of the exhibits admitted in evidence in this cause before the Referee in Bankruptcy, and said U. S. District Court.
13. Portions of exhibit being transcript of testimony of Herman Murphy and Ella M. Murphy on proceedings supplementary to execution in the Superior Court in and for the County of Alameda, September 23, 1910.

Yours truly,

DANIEL O'CONNELL,

Solicitor for Petitioning Creditors Appellants.

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\*Page-number appearing at foot of page of original certified Record.



[Endorsed]: Filed Apr. 30, 1915, at 3 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2]

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**Appellant's Statement for Transcript on Appeal.**

[Style of Court, Title and Number of Cause.]

Before ARMAND B. KREFT, Referee in Bankruptcy.

**Report of Referee in Opposition to Adjudication.**

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States, in and for the Northern District of California:

The undersigned, referee in bankruptcy, to whom was referred the issues joined by the answer of Herman Murphy to the creditors' petition herein, to ascertain and report the facts and his conclusions thereon, respectfully certifies and reports:

That upon the hearing of said matter Daniel O'Connell, Esq., appeared on behalf of the petitioning creditors, and H. F. Chadbourne, Esq., representing Messrs. Mastick & Partridge, attorneys for the alleged bankrupt, appeared on behalf of the alleged bankrupt. The hearing of said matter having been concluded, the same was submitted on briefs.

The petitioning creditors are James R. Ryan and Peter Bazinet, holding a joint claim in the sum of \$644.56, M. M. Carrigan, holding a claim for \$115.25, and William Miller, holding a claim for \$3,909.76. All of said claimants have recovered judgment against Murphy upon their said claims. It is not necessary to review the nature of these claims, as the

amounts proven herein exceed the jurisdictional requirement. [3]

It appears that on September 1st, 1905, William Miller loaned to Herman Murphy, \$1,000; on March 8th, 1906, \$1250; and on March 28th, 1906, \$300. On December 6th, 1910, Miller recovered a judgment in the Superior Court of San Francisco against Murphy in the sum of \$3,377.77. Prior to July 19th, 1906, Herman Murphy was the owner of certain real property in Alameda County, described in the petition herein. It is claimed by Murphy, and he so testified upon the hearing, that on July 19th, 1906, he conveyed said real estate to Ella M. Murphy, his wife, but the deed was not recorded until June 22d, 1908. This property was thereafter conveyed by his wife to the Progressive Investment Corporation, and a deed from her to said corporation was recorded in Alameda County on July 5th, 1910. Said corporation was organized on April 10th, 1910, and on November 30th, 1910, its charter was forfeited under the state law, for nonpayment of license tax. It is claimed by Miller that the transfer of said real property by Murphy to his wife was in fraud of his creditors, and void as to them.

A suit was commenced by him on March 28th, 1912, against said Murphy, Ella M. Murphy, the Progressive Investment Corporation and others (a copy of the pleadings, findings and judgment in which action is contained in Respondent's Exhibit No. 2), to set aside various conveyances made by Herman Murphy to his wife, and conveyances made by her to the Progressive Investment Corporation. This suit

was tried before the Honorable Everett J. Brown, Judge of the Superior Court of Alameda County, and findings were made by said court on April 3d, 1913, whereby it was found that the allegations of the complaint of said William Miller contained in paragraph 14 of his complaint, alleging that the conveyances sought to be set aside were made by said Murphy to his wife, and by her to the Progressive Investment Corporation with intent to defraud him, William Miller, were not true; and judgment was entered on the same day, that said William Miller take nothing by said action.

On March 24th, 1913, said Miller caused a sale to be made by [4] the sheriff of the County of Alameda, of all the right, title and interest of Herman Murphy in the real property described in the petition herein under an execution issued on the judgment obtained by him December 6th. 1910, and at which sale said Miller was the purchaser, the property so sold being one of the pieces of property which had been conveyed by Murphy to his wife, and which conveyance said Miller had sought to set aside in the suit in which judgment was entered on April 3d, 1913, against the contentions of said Miller.

On July 21st, 1913, the petition in bankruptcy herein was filed, in which petition it was charged that said Murphy committed an act of bankruptcy on March 24th, 1913, in that he suffered and permitted, while insolvent, the said Miller to obtain a preference by reason of said sale, and not having within at least five days before the sale or final disposition of said property, vacated or discharged his prefer-

ence. From all of which it appears that said Miller charges as an act of bankruptcy, an alleged preference received by himself.

The deed from Murphy to his wife was recorded June 22d, 1908. If such deed was made with intent to defraud creditors, an act of bankruptcy was committed under Sec. 3-a (1), which must be taken advantage of by the creditors within four months after the deed was recorded. In this case William Miller having permitted such four months to expire, now seeks by means of such execution sale to create an act of bankruptcy under Sec. 3-2 (1).

The petition further recites certain facts concerning the conveyance of certain real property by said Murphy to his wife in 1906, and the subsequent conveyance to the Progressive Investment Corporation, which facts are the same facts charged in the action aforesaid of Miller against Murphy and others in the Superior Court to set aside conveyance. In view of the fact that the claims of William Miller were at the time of said sale on execution in the course of trial in the State Court, I can conceive of no reason for the proceeding taken by Miller in causing such sale to be made, [5] other than it was intended thereby to lay a foundation of a charge of preference upon which a bankruptcy proceeding might be brought, with the object in view of transferring from said court to this Court the issues in the suit then pending.

From the above state of facts the question is presented whether this Court shall entertain this petition. I am satisfied that the other petitioning credi-

tors have been caused to join in this proceeding at the instance of William Miller.

At the outset of this hearing, when it became known to the referee that the property which is the subject of the alleged preference was adversely claimed, the referee stated to the parties that in his opinion this Court should not proceed to try the issues relating to such adverse claim, but that it might proceed with the inquiry as to whether the alleged bankrupt was insolvent at the time the alleged preference was acquired, and that if insolvency at that time was proven, the making of the adjudication of bankruptcy should be suspended until the question of title had been determined in the proceeding which the transferee and present claimant of said property is a party. Counsel for petitioners, however, desired to present his case as to the alleged fraudulent character of the transfers, and invoked the rule of *in re Barnette*, No. 5611, in this Court, namely, that the Referee should not exclude evidence offered, although he may decide it incompetent, irrelevant or immaterial; and he was permitted to do so, the Referee not anticipating the length to which such hearing would be prolonged. The testimony taken comprises 459 pages, practically all of which is directed to the question of the invalidity of the transfers made by Herman Murphy to his wife, and by her to the Progressive Investment Corporation.

I am making no finding upon such issues, for the following reasons: First, That the determination of such issues in petitioner's favor would not establish the ultimate fact to be proven, namely, that William

Miller will receive a preference by virtue of his purchase at the execution sale, such determination not being [6] binding on the transferees who claim the property. Second. That the State Court having first acquired jurisdiction over the issues concerning the title to said property, it should, in my opinion, retain the same. The judgment of said court is, in part, in the following language:

“That the directors or trustees of the defendant Progressive Investment Corporation in office at the date of the forfeiture of the charter thereof, to wit, on the 30th day of November, 1912, as trustee for the creditors and stockholders of said Progressive Investment Corporation are the owners of all the described property,” describing the property mentioned in the petition herein; and this judgment is *res adjudicata* as to the claims of William Miller unless reversed on the appeal now pending, taken from such judgment by William Miller, being between the same parties and on the same issues.

It is contended by counsel for petitioning creditors that this Court can always decide questions of title when necessary to the granting of relief. Cases are referred to where bankruptcy courts have considered questions of fraudulent transfers although the transferees were not parties to the proceeding.

Under the first and second acts of bankruptcy as defined in Section 3 of the Act, namely, transfers with the intent to hinder, delay and defraud creditors, and preferential transfers, the Court will try the question as to whether the transfers were made with

intent to defraud or prefer without the transferee being a party, although its judgment is not binding upon him. But under said acts of bankruptcy the intent of the bankrupt to defraud or prefer, is the essential element. The question as to whether the property can be recovered from the transferee is immaterial. Under Sec. 3-a (3), being the provision covering the act of bankruptcy charged herein, it must be proven that the property of the bankrupt will be obtained by the creditor through legal proceedings. And where the property is adversely claimed, the fact that value will be received by the creditor cannot be established until the question of title has been determined in a proceeding binding upon the adverse claimant. Otherwise a person may be adjudged a bankrupt for failing to [7] release a levy on property which he did not own. It may be that this Court has power to bring such adverse claimant before the Court so that it may determine the rights of all parties. But in the case at bar the State Court having first acquired jurisdiction in a suit brought by one of the petitioning creditors herein, presenting the same issues, such court should be permitted to proceed to a final determination thereof, even if this Court could stay such proceedings and bring all the parties before it.

Counsel for petitioners further contend that such adverse claim can only be made by Mrs. Murphy or the Progressive Investment Corporation, and that neither of said parties has intervened to assert such claim in this proceeding.

Certainly the alleged bankrupt charged with suf-

fering a creditor to obtain a preference through legal proceedings by an execution, upon property which it is claimed belongs to the bankrupt, can disclaim ownership of the property and show that it is held by another, adversely to the claim of the creditors. It may be that this Court will inquire into the adverse claim sufficiently to ascertain whether the same is merely colorable. The bankrupt in this case has shown that it has been decreed by the State Court that the property is not his property, which is conclusive proof that a *bona fide* adverse claim exists.

As to the insolvency of Herman Murphy at the date of the alleged commission of the act of bankruptcy charged and at the date of the filing of the petition herein, the evidence shows that Murphy at said times owned no property of any ascertainable value, and I find that at such times he was insolvent.

My conclusion is that the petition herein either should be dismissed, or further hearing stayed until the appeal aforesaid by William Miller from the judgment of the State Court can be determined.

Respectfully submitted:

San Francisco, July 3, 1914.

A. B. KREFT,

Referee in Bankruptcy. [8]

The expense of this proceeding has been as follows:

Paid reporter by petitioning creditors.....	\$396.20
“ “ “ respondent . . . . .	37.50
<hr/>	
Total.....	\$433.70



Papers transmitted herewith:  
Transcript of testimony, 2 vols.  
Order setting hearing.  
Notice to Herman Murphy et al. to produce books,  
etc.  
Seven summonses to witnesses.  
Opening brief of petitioners.  
Reply brief of bankrupt.  
Closing brief of petitioners.  
Petitioners' Exhibits A to Z and AA to II.  
Respondents' Exhibit 1, 2 and 3. [9]

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[Style of Court, Title and Number of Cause.]

**Exceptions to Referee's Report.**

Now come the petitioning creditors and within the time extended by said United States District Court herewith present and file their exceptions to the Referees' Report in the above-entitled proceeding as follows:

**FIRST EXCEPTION.**

The order referring the petition of said creditors and the answer thereto is as follows:

"On motion of Daniel O'Connell, Esquire, by the Court ordered that this matter be and the same hereby is referred to A. B. Kreft, Referee in Bankruptcy, to ascertain and report the facts and his conclusions therefrom on the issues joined by the answer to the creditors' petition herein."

Among "the issues joined by the answer to the creditors' petition herein" were as follows:

1. At the date of filing the petition was Herman

Murphy indebted to James R. Ryan and Peter Bazinet in the sum of \$644.50 or any other sum?

2. At the date of filing the petition was the judgment in favor of M. M. Corrigan against Herman Murphy in full force and effect?

3. Was the respondent Herman Murphy the owner of any part of the real estate described in the creditors' petition at any time since July 19, 1906?  
[10]

4. Was the respondent Herman Murphy the owner of any part of the real estate described in the creditors' petition when said property was attached July 1, 1908, and July 20, 1908, in the action of William Miller against Herman Murphy?

5. Was the respondent Herman Murphy the owner of any part of the real estate described in the creditors' petition at the time of the commencement of the suit against Herman Murphy and others to foreclose the mortgage of Berkeley Bank of Savings and Trust Company on the property?

6. Was the respondent Herman Murphy the owner of any part of the real estate described in the creditors' petition at the time of the commencement of the said suit against Herman Murphy to foreclose the mortgage of Berkeley Bank of Savings and Trust Company on the property?

7. Was Herman Murphy insolvent on the 24th day of March, 1913, when said real estate was sold on execution against him?

8. Was Herman Murphy at the time of the sale of said property at execution on March 24, 1914, the owner of any right, title, estate or interest in the

same real property described in the creditors' petition?

9. At the time of said sale was said real estate or any part of it the property of said Herman Murphy, respondent?

10. Did Herman Murphy, while insolvent, on July 19, 1906, or at any time, make, sign and deliver to his wife, E. M. Murphy, a deed of gift of said real property?

11. Did Herman Murphy while heavily indebted and in contemplation of insolvency make, execute and deliver and record a gift deed of said property to his wife, Ella M. Murphy, in July 19, 1906?

12. Did Herman Murphy execute July 19, 1906, and record a gift deed of said property to his wife, Ella M. Murphy, with the intent or for the purpose of hindering or delaying or cheating or defrauding any of the past or any of the present or any of [11] the future creditors of said Herman Murphy?

13. Was the said deed made or recorded with the intent, or for the purpose of hindering or delaying, or defrauding William Miller, or James R. Ryan, or Peter Bazinet?

14. Did the said Ella M. Murphy have knowledge or notice of said intent or purpose?

15. Did the said Ella M. Murphy participate in said intent or purpose?

16. Was there any change in the possession or control of said property after the said making or recording of said deed?

17. Was there any consideration whatever at any time paid for said deed so recorded?

18. Was the organization of the corporation Progressive Investment Corporation a mere contrivance and sham for the purpose of putting the record title to said property in the name of said corporation and beyond the reach of the creditors of Herman Murphy, or for the purpose of hindering, or delaying or hindering or defrauding the creditors of Herman Murphy?

19. Was the conveyance of said real estate by said Ella M. Murphy and recorded July 5, 1910, made or executed or recorded with the intent or for the purpose of hindering or delaying or defrauding any of the creditors of Herman Murphy?

20. Did the said conveyance so recorded July 5, 1910, hinder or delay or defraud any of the creditors of said Herman Murphy?

21. Was there any consideration whatever paid for said conveyance?

22. Did the said Progressive Investment Company or its incorporators and directors Ella M. Murphy, Helen B. Murphy and C. E. King have any notice or knowledge of any writs of attachment being recorded against said property July 1, 1908, or on July 20, 1908, or on February 10, 1909, or of any said attachments [12] before the making or recording of said deed which was recorded July 5, 1910?

23. Did the said corporation and its officers and directors know before or at the time of the making or of the recording of said conveyances that Herman Murphy was insolvent?

24. Was Herman Murphy insolvent June 22, 1908?

25. Was Herman Murphy insolvent July 19, 1906?

26. Has Herman Murphy been insolvent since June 22, 1908?

27. Did the recording June 22, 1908, of the deed dated July 19, 1906, hinder or delay the creditors of Herman Murphy from collecting the debts due them from Herman Murphy?

None of the facts arising on these twenty-seven issues, except the first are contained in said report, and no report whatever is made on the other twenty-six issues, or of any of the facts arising therefrom.

#### SECOND EXCEPTION.

The findings and report of the referee are worthless, in that, he had no jurisdiction to make the findings and report that he does make, because they are not of facts relating to, or arising from, the issues raised by the answer to the creditors petition, which were the only issues referred to him, and he had no jurisdiction, power or authority whatever except that which was contained in the order of reference aforesaid.

#### THIRD EXCEPTION.

The referee knew the issues referred to him, and deliberately and wilfully refused to find and report any of the facts relating to said issues as plainly appears from said report wherein said Referee says:  
[13]

“It is claimed by William Miller that the transfer of said real property by Murphy to his wife was

in fraud of his creditors and void as to them.” (Page 2.) This was admittedly the main and decisive issue in the case. Again, on page 4 of that report he says:

“The testimony taken comprises 459 pages, practically all of which is directed to the question of the invalidity of the transfers made by Herman Murphy to his wife, and by her to the Progressive Investment Corporation.” Also on page 7 of said report he says:

“The cost of this proceeding has been as follows:  
 Paid reporter by petitioning creditors . . . \$396.20  
 Paid reporter by respondent . . . . . 37.50  
 \_\_\_\_\_  
 \$433.70”

“I am making no finding upon such issues, for the following reasons: first, that the determination of such issues in petitioner’s favor would not establish the ultimate fact to be proven, namely, that William Miller will receive a preference by virtue of his purchase at the execution sale, such determination not being binding on the transferees who claim the property: second, that the state court having first acquired jurisdiction over the issues concerning the title to said property, it should, in my opinion, retain the same.”

Neither of those two “reasons” or questions he refers to, were referred to him, and he had no jurisdiction or authority to determine, or consider, or even hear them; his reasons were not called for, and they have no bearing whatever on the issues involved.

The petitioning creditors orally and in their briefs specifically called the attention of the Referee to their evidence showing plainly the said fraud and specifically requested the Referee to report the facts bearing upon that question, and the Referee [14] promised to do so, that question of fraud was specifically argued by respondent but an examination of his report shows that he failed to do so and reported irrelevant and immaterial facts which were not based on any evidence in the record, or were admitted in the pleadings or by the parties.

#### FOURTH EXCEPTION.

The Referee usurped the jurisdiction of the United States Circuit Court of Appeals in the following particulars:

1. It was a part of the record before him and brought to his attention that the United States District Court had overruled respondents' demurrer and decided that the petition should not be dismissed from which decision no appeal was taken and it had become final judgment, yet in the fact of this record and the judgment of the United States District Court he says on page 4 of his report:

“From the above state of facts the question is presented whether this Court shall entertain this petition.”

Whereas the only questions before the Court were presented by the pleadings on which that question was settled before the case was referred to him and had become the law of the case binding on the world, and beyond the jurisdiction of the Referee to review,

it could not then be revived by the U. S. Circuit Court of Appeals.

2. The Referee did in fact usurp a jurisdiction greater than that of the United States Circuit Court of Appeals and did reverse the United States District Court when he says on page 6 of his report:

“My conclusion is that the petition herein either should be dismissed or further hearing stayed until the appeal aforesaid by William Miller from the judgment of the State Court can be [15] determined.” This conclusion was stated not only in the face of the contrary and final judgment made by the District Court after oral argument and typewritten briefs, that is should not be dismissed, but also that the hearing should not be stayed but should proceed and that said Referee should hear the evidence and report the evidence and the facts on the issues raised by the pleadings.

3. That conclusions shows a plain disregard of the decision of the Supreme Court of the United States in the case of the U. S. F. and D. Co. vs. Bray, 225 U. S. 205, 217; 56 Law edition 105 which decides that the U. S. Bankruptcy Court must not surrender its jurisdiction and control in bankruptcy matters to any other tribunal; and other well established principles governing the exercises of complete jurisdiction by courts of equity and other courts.

#### FIFTH EXCEPTION.

The Referee plainly committed prejudicial error as shown by that part of his conclusion which says: “or further hearing stayed until the appeal aforesaid by William Miller from the judgment of the es-



tate Court can be determined” and also shown on page 2 of his report showing that in direct violation of the decision in *Di Nola vs. Allison*, 143 Cal. 106, 65 L. R. A. 419, and other decisions brought to his attention admitted in evidence the record of an action pending before Judge Brown in the Superior Court in Oakland in which an appeal had been duly taken, bill of exceptions settled, a motion for new trial pending and since granted, and increased his error by basing his conclusion on that plainly incompetent evidence, after emphasizing his error in his report by repeatedly referring to that judgment which could not exist after his statement of a pending appeal. [16]

We have thus seen that of his two conclusions they were both finally disposed of by the decision and action of the District Court before anything was referred to him and again that his second conclusion was based solely on incompetent evidence and must be rejected with the evidence.

#### SIXTH EXCEPTION.

The said Referee invents, raises and decides many questions which are not raised by the petition and answer, and which questions were not referred to him and his decisions of such questions are without support of law or evidence and against the law and the evidence, as follows:

1. On page 4 of his report he says:

“I am satisfied that the other petitioning creditors have been caused to join in this proceeding at the instance of William Miller.”

No such question was raised by the pleadings, or

was referred to the Referee, or is of the slightest materiality. It is plain that in order to have three creditors join in a petition they cannot be forced to join, and there must be a community of interest and purpose before they will join, and some one must in every case, apply to, and persuade, the other creditors to join in the petition with him.

2. Its immateriality is further shown by the fact that it is alleged on page 3 of the petition and admitted that the whole number of creditors is less than 12 and therefore only one creditor was necessary as a petitioner, Ryan and Bazinet alone were sufficient. But the petitioning creditors submit that whatever satisfied the Referee, there was *not a particle of evidence offered*, and there is not a particle of evidence in the record, directly or indirectly showing that William Miller persuaded the other creditors to join him, or that the other creditors [17] persuaded William Miller to join them.

3. Indeed there is an insinuation that this defrauded judgment creditor whose savings were loaned to the alleged bankrupt February 1, 1905, and who has been during the past nine years in every court vainly trying to collect the money justly due him, is now guilty of some wrong in applying to the bankruptcy court to assist him in collecting his money and securing justice.

#### SEVENTH EXCEPTION.

The Referee bases his conclusions in his report on grounds which are not good in law and equity and which were decided before any matters were referred to him, as follows:

On page 3 of his report the Referee says :

“On July 2, 1913, the petition in bankruptcy herein was filed, in which petition it was charged that said Murphy committed an act of bankruptcy on March 24, 1913, in that he suffered and permitted, while insolvent, the said Miller to obtain a preference by reason of said sale, and not having within at least five days before the sale or final disposition of said property vacated or discharged his preference. From all of which it appears that said Miller charges as an act of bankruptcy, an alleged preference received by himself.”

The immateriality of such statement and ground is as follows:

1. These facts being stated in the petition the overruling of the demurrer settled the law that they did not in any way obstruct the granting of the petition or any of the judgment creditors resorting to the court of bankruptcy to collect their judgments.

2. There is no law whatever which would prevent even William Miller or any other judgment creditor complaining to a [18] court of bankruptcy that his judgment debtor committed an act of bankruptcy by *permitted* his property to go to execution sale when any person could be a purchaser, even though that judgment creditor happened to be the purchaser, and thus force the bankrupt to deliver up all his concealed property towards the payment of his honest debts, which cannot injure, but will benefit him by so far reducing his indebtedness. If he has no other property he is not damaged. The judgment creditor can secure no

advantage, for if the purchase is a preference it is set aside by the bankruptcy proceedings which must be instituted within four months after the sale. There is certainly no wrong in a creditor bidding and buying at an execution sale open to all persons to bid and buy.

3. The petition shows that Ryan and Bazinet were creditors to the amount of \$600.00 and that there were less than 12 creditors in all and they could maintain the petition regardless of Miller, and anything that Miller did or did not do could not affect them in prosecuting the petition.

#### EIGHTH EXCEPTION.

There is no claim to the real estate referred to in the petition, nor was there any adverse claim to the property by any other person or corporation than Herman Murphy.

#### NINTH EXCEPTION.

There is no excuse whatever for the Referee not finding and reporting the material and decisive facts in the case for they plainly appeared from admissions and evidence to be as follows:

1. It was both admitted and proved that the alleged fraudulent deed of the property in question dated July 19, 1906, from [19] Herman Murphy to his wife was a gift deed made without any consideration. But the Referee does not report those facts.

2. It was admitted and proved and appears on page 2 of the Referee's Report that at the time and long prior to the date of said deed, William Miller was a creditor of Herman Murphy for money bor-

rowed by Herman Murphy \$100.00 borrowed February 1, 1905; \$1,250.00 March 8, 1906, and \$300.00 March 28, 1906, not one cent of which loans has ever been paid.

3. It was admitted, proved and unexplained, and it appears on page 2 of the Referee's Report, that the deed was not recorded until June 22, 1908, nearly two years after its date.

4. It was proved but does not appear in the Referee's Report, that this real estate was attached July 1, and July 20, 1908, in an action by William Miller against Herman Murphy to collect those three items of indebtedness. Judgment was entered in said action December 6, 1910, for the full amount claimed with interest from June 1, 1908.

5. It was proved but does not appear in the Referee's Report, that no motion for new trial was made in that action, no bill of exceptions was filed, and that Herman Murphy admitted that the money was always justly due Miller, yet in June, 1909, and about the last day allowed by law, he filed an appeal from said judgment and December 12, 1912, the Supreme Court dismissed said appeal.

6. There was no evidence whatever that said deed of July 19, 1906, was ever delivered by Herman Murphy to his wife or to any other person for her, but on the contrary it appears from the uncontradicted evidence of the said wife of Herman Murphy that said deed was never delivered to her, but that it has always been and is now in the possession of said Herman Murphy who [20] caused it to be recorded, and has had it in his possession before and

ever since it was recorded. But the Referee's Report does not mention any of these facts.

7. It appeared that prior to and on July 19, 1906, Herman Murphy was heavily indebted, and that ever since July 19, 1906, he has been insolvent.

8. On July 19, 1906, Herman Murphy owed:	
William Miller (Trans. page 11) ..	\$2250.00
George C. Richards (Trans. page 60) .....	\$2000.00
	\$4250.00

His property on that date and August 1, 1906, was as follows:

Balance in bank July 1, 1906.....	\$717.81
“ “ “ August 1, 1906... ..	92.83

Interest in certain mining claims, on which no value was or could be set by Herman Murphy or any one else, and they were also exempt to a value of \$5000.00, about \$1500.00 to \$2000.00 in a safe deposit box to which himself and his wife had keys and access.

Payment of these sums had been continually demanded from him, but he was unable to pay, and no part of the said sum due to Miller has ever been paid and no part of the money due Richards was ever paid until March 25, 1913, when it was compromised by the payment of \$900.00 for a judgment of more than \$2000.00.

It plainly appeared from the evidence that the conveyances of July 19, 1906, made Herman Murphy insolvent and he has been insolvent ever since.

9. At the dates of the recording of those deeds June 22 and June 30, 1908, said Herman Murphy owed the same debts [21] of.....\$4250.00 and the following additional:

C. L. Hooper.....	\$ 200.00	
William Miller .....	300.00	
William Miller note of June 16,		
1908 .....	4000.00	\$4500.00

Making in all an unsecured indebtedness of ..... \$8750.00

There was no more property accessible to his creditors on execution except a debt of \$1000.00 was due to him as a bill receivable.

There was since October 31, 1907, a suit pending against him to collect that debt of G. L. Hooper.

Miller and the other creditors repeatedly demanded the payment of their debts but Murphy was unable to pay, and did not pay, any of them.

It plainly appears from the evidence that he was insolvent when the deeds were recorded, and had been for nearly two years before, and has been ever since.

10. It plainly appeared that but for the said conveyance of July 19, 1906, William Miller and the other then creditors could have collected their debts out of that property, and by reason of that conveyance they have been delayed and prevented collecting their debts. Also the circumstances were such

that Herman Murphy knew and intended that such would be the consequences of such conveyance and especially the recording of said conveyance.

11. It plainly appeared from the uncontradicted evidence that there was no change whatever in the possession or control of the property since said conveyance July 19, 1906, and that the conveyance was a mere sham and contrivance to hinder, delay and defraud the creditors of Herman Murphy, and that it has so [22] succeeded thus far, and therefore that the conveyance was *void* that the real estate was owned by Herman Murphy when it was sold March 24, 1913, on execution sale and the failure to prevent that sale was an act of bankruptcy as alleged in the petition.

WHEREFORE the said petitioning creditors pray this Honorable Court to reject the conclusions and recommendations of the Referee and set the earliest convenient date for hearing and considering the evidence reported by the Referee and make and enter an order and judgment granting the prayers of the petition and adjudging said Herman Murphy a bankrupt, and such other orders and decrees as the evidence and circumstances require.

DANIEL O'CONNELL,  
Attorney for Petitioning Creditors. [23]

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### Opinion and Decision.

DANIEL O'CONNELL, Esq., Attorney for  
Petitioning Creditors.

MASTICK & PARTRIDGE, Attorneys for  
Herman Murphy.

The argument on the demurrer to the petition



herein was directed solely to the time of the sale averred in the petition and not to the character thereof and the only question decided in overruling the demurrer was that the petition was filed in time. No authority has been cited to the effect that the failure of an alleged bankrupt to release the levy of an attachment upon his supposed interest in property transferred by him nearly seven years previously, constitutes an act of bankruptcy, even though followed by averments that such transfer was a fraudulent one. Nor can it appear that such attaching creditor will obtain a preference until such sale has been determined to be fraudulent in an action to which the transferee is a party. Nor will a Court listen with much patience to a petitioning creditor who complains that he himself has received a preference under such proceedings. For these reasons the report of the Referee is affirmed, the petition for adjudication denied, and the proceedings dismissed.

M. T. DOOLING,  
Judge.

December 4, 1914. [24]

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[Style of Court, Title and Number of Cause.]

**Petition for Appeal in Bankruptcy (and Order Allowing Appeal).**

Petition on appeal of James R. Ryan, Peter Bazinet and William Miller, and each of them petitioning creditors in bankruptcy of Herman Murphy, alleged involuntary bankrupt.

The above-named James R. Ryan, Peter Bazinet and William Miller, petitioning creditors in bankruptcy against Herman Murphy, alleged involuntary bankrupt, considering themselves, and each of themselves, aggrieved by the judgment and decree made and entered on the fourth day of December, A. D. 1914, in the above-entitled cause, affirming and confirming the report of the Referee, and denying the petition to adjudge said Herman Murphy a bankrupt, and dismissing said proceedings in bankruptcy, do hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filled herewith, and they and each of them pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

DANIEL O'CONNELL,

Attorney for Petitioning Creditors.

The foregoing claim of Appeal is allowed.

M. T. DOOLING,

United States District Judge. [25]

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[Style of Court, Title and Number of Cause.]

**Assignment of Errors.**

Now, on this fourteenth day of December, 1914, come James R. Ryan, Peter Bazinet and William Miller and each of them, the petitioning creditors, and say the decree entered in the above cause on the

fourth day of December, A. D. 1914, is erroneous and unjust to said petitioning creditors and file the following assignment of errors :

First. Because the said District Court erred in ruling, holding and deciding that the Referee in Bankruptcy had any jurisdiction other than "to ascertain and report the facts and his conclusions therefrom on the issues joined by the answer to the creditors' petition herein," especially as the record and evidence show that the only authorization given to said Referee was in the following order: "On motion of D. O'Connell, Esq., it is by the Court ordered that this matter be and the same is hereby referred to A. B. Kreft, Referee in Bankruptcy, to ascertain and report the facts and his conclusions therefrom on the issues joined by the answer to the creditors' petition herein."

Second. Because the said District Court erred in ruling, holding and deciding that the Referee in Bankruptcy had jurisdiction to consider and determine the sufficiency of the allegations of the creditors' petition, or other questions of law other than for admission or rejection of offered evidence. [26]

Third. Because the said District Court erred in approving and affirming the report of said Referee in that said report did not, in fact, or even pretend to, "ascertain and report the facts and his conclusions therefrom on the issues joined by the answer to the creditors' petition herein"; although said report states, on page 4 thereof, that "the testimony taken comprises 459 pages, practically all of which is directed to the question of the invalidity of the trans-

fers made by Herman Murphy to his wife, and by her to the Progressive Investment Corporation” and again on page 7 of said report he says: “The cost of this proceeding has been as follows: Paid reporter by petitioning creditors, \$396.20, paid reporter by respondent, \$37.50, total, \$433.70”; and said report further says: “I am making no finding upon such issues, for the following reasons: First, that the determination of such issues in petitioners’ favor would not establish the ultimate fact to be proven, namely, that William Miller will receive a preference by virtue of his purchase at the execution sale, such determination not being binding of the transferees who claim the property. Second: They, the State Court, having first acquired jurisdiction over the issues concerning title to said property, it should in my opinion, retain the same.”

Fourth. Because said District Court erred in approving and affirming the report of said Referee in that said referee in his said report states that he deliberately fails to comply with the said order referring the matter to him and also states that he deliberately fails to ascertain and report the facts on the material and decisive issues raised by the answer to the creditors’ petition and on which issues the Referee states nearly all of the great amount of evidence was offered before him.

Fifth. Because the said District Court erred in not sending the matter back to said Referee ordering him to comply with the [27] said order referring said matter to him and “to ascertain and report the facts and his conclusions therefrom on the issues

joined by the answer to the creditors' petition herein," as originally ordered by said District Court, which order has never been revoked or modified in any manner.

Sixth. Because the said District Court erred in disregarding, and not considering as binding and conclusive upon said District Court, the decision and judgment of said District Court made August, 1913, overruling the respondent's demurrer to the said creditors' petition, which decision and judgment has never been reversed or modified and from which no appeal was ever taken, and thus conclusively established the sufficiency of the allegations of an act or acts of bankruptcy committed by respondent and to have said respondent adjudged a bankrupt regardless of any argument made before the overruling of said demurrer.

Seventh. Because the said District Court erred in approving and affirming said report as it thereby deprives the petitioning creditors of a trial and ascertainment and determination of the facts on which the rights of said petitioning creditors depend and which will enable them to properly and fully present their claims to the United States Circuit Court of Appeals, especially as evidence and proof was offered before said Referee showing that the title to the real estate involved, never passed from the bankrupt, by reason of the established fraudulent intent of the grantor, and also because the gift deed was never delivered to the grantee.

Eighth. Because the said District Court erred in not giving the petitioners a trial on the facts and

making findings of the facts on the issues raised by the answer to the petition of the creditors as the law requires said District Court to do when a [28] jury trial is not claimed and where the judgment overruling the demurrer is unappealed and has become final and conclusive as in this case, and regardless of any Referee, or any reference to any Referee.

Ninth. Because said District Court erred in ruling, holding and deciding that "the only question decided in overruling the demurrer was that the petition was filed in time," in that the record of the decision and judgment overruling the demurrer August, 1913, must govern, and is decisive of what was decided at that time and cannot be modified or changed collaterally, December 4, 1914, and said demurrer alleges as follows: "Now comes Herman Murphy, respondent above named, and demurs to the petition in involuntary bankruptcy in the above-entitled matter, and for grounds of demurrer specifies: that said petition does not state facts sufficient to constitute a cause of bankruptcy against said respondent. Wherefore, respondent prays that his demurrer be sustained with costs," and therefore the said judgment "demurrer overruled" and allowing so many days to answer decided that the petition stated "facts sufficient to constitute a cause of bankruptcy against respondent."

Tenth. Because said District Court erred in holding, ruling and deciding that "the failure of an alleged bankrupt to release the levy of an attachment upon his supposed interest in property transferred by him nearly seven years previously does not con-

stitute an act of bankruptcy even though it is averred that such transfer was a fraudulent one," in that a fraudulent transfer is void and the property remains that of the bankrupt the same as if no transfer had been made, no matter how many years previous the deed was recorded, and it is alleged and proven that the attachment by virtue of which the property was sold was made within [29] 30 days after the recording of the fraudulent transfer, and continued in force until the property was sold on the execution issued on the judgment in the same action in which the attachment was issued.

Eleventh. Because said District Court erred in holding, ruling and deciding that "it cannot appear that such attaching creditor will obtain a preference until such sale has been determined to be fraudulent in an action to which the transferee is a party," in that the court of bankruptcy has the power to determine any fact necessary to the exercise of its own exclusive jurisdiction; also neither the bankrupt or grantee or transferee made any objection whatever on the record to the determination of the fact, and the grantee or transferee personally testified fully before the Referee as to her claim and title and the transcript of her testimony on the same subject, September 23, 1910, before the Superior Court of the State of California, was also put in evidence before the Referee; and it also appeared from the creditors' petition and the answer and also it was admitted and proved that the alleged fraudulent deed was a voluntary gift deed from the bankrupt to his wife and therefore the intent or knowledge or guilt

or innocence of the grantee or transferee is immaterial and that it is not necessary that she should be a party, and the fraudulent intent or insolvent condition of the grantor alone was sufficient and decisive. It appeared that said grantee or transferee never conveyed the property, and it was not alleged or claimed that she ever attempted to convey it prior to the placing of the said attachment on the property. These allegations appeared in the said petition to which said demurrer was overruled.

Twelfth. Because said District Court erred in holding, ruling, and deciding that the fact that the petitioning creditor, [30] William Miller, being the purchaser at said execution sale of the real estate of the alleged bankrupt, which sale is alleged to constitute an act of bankruptcy, cannot, as one of the petitioning creditors, complain of it as a preference, in that the said District Court in overruling said demurrer, August, 1913, decided and adjudged that he could and, no appeal having been taken from said judgment on said demurrer, and it remaining in full force and effect December 4, 1914, is conclusive and binding on said District Court until reversed by some direct proceeding for that purpose. Also in that the said creditors' petition to which said demurrer was filed and the respondent's answer each directly and specifically allege that said William Miller purchased said real estate at said execution sale on March 24, 1913. Also in that said petition alleges and it is not denied in the answer and thereafter admitted, and there was no evidence to the contrary offered at the hearing that the number of creditors of said



Herman Murphy was less than twelve, and therefore under the law only one petitioning creditor was necessary and the claim of the petitioners Ryan and Bazinet was alleged, proved and reprinted to be for more than \$600.00, and the fact that William Miller as a complaining petitioner was mere surplusage and immaterial and could not affect the rights of the other petitioners. Also no facts were proved or alleged showing any estoppel of said Miller; or that he had done any wrong; or that he did not come into court with clean hands; or that the petition of Herman Murphy was in any way changed by such purchase; or even that said Miller purchased with any intent to subsequently make it an act of bankruptcy on the part of Murphy; or to complain of it as a preference.

Thirteenth. The said District Court erred in not directly or by reference finding the facts on the issues raised by the said creditors' petition and the answer of the respondent Herman Murphy as follows: [31]

Whether or not Herman Murphy was insolvent when that voluntary gift deed was made to his wife July 19, 1906.

Whether or not Herman Murphy was insolvent when that deed was recorded June 22, 1908.

Whether or not that deed to his wife was made July 19, 1906, in contemplation of insolvency.

Whether or not that deed was recorded June 22, 1908, in contemplation of insolvency.

Whether or not that deed was made July 19, 1906, with the intent and purpose to delay and defraud

any creditor of said Herman Murphy.

Whether or not that deed was recorded June 22, 1908, with the intent and purpose of delaying and defrauding any creditor of said Herman Murphy.

Whether or not said deed was ever delivered to his wife.

Whether or not said deed was ever delivered to his wife before the recording of the said attachment.

If said deed was ever delivered to his wife, when.

Because there was before said Referee uncontradicted evidence that there never was a delivery of said deed, which evidence was the testimony of said wife given in the Superior Court of the State of California in and for the County of Alameda more than two years after the recording of said attachment, to wit: September 23, 1910, in supplementary proceedings as a judgment against said Herman Murphy, at which time she swore that she knew nothing of those deeds and therefore could not have accepted them, and there could not have been any delivery. It appeared that she also testified at said time and place that she knew absolutely nothing about her property, or business, and left all entirely in the control of her said husband since their marriage, and that she never received or requested any accounting whatever from him. She also testified before the Referee that all her books, deeds, [32] papers of every kind, were always, since her marriage, in the possession and control of her husband since their marriage, and she did not know what they were or where they were, or anything about them, except that she knew as he had them they must be

safe, showing that said Herman Murphy never parted with the custody, control and dominion of said deed. She also testified that said Progressive Investment Corporation never received or accepted any deed of said property and never had a meeting of its board of directors, and that prior to her testimony for her own private reasons she had destroyed all the books and papers of every kind of said corporation and also all her own books and papers that she had in her possession or control. It was admitted and also proved that the said judgment of said William Miller was recovered on promissory notes given February 1, 1905, and March, 1906, and which became due before July 19, 1906, and no part of the principal of which notes has ever been paid. There was other evidence that said Herman Murphy was heavily indebted on July 19, 1906, and many of those other debts then due have never been paid. It was admitted and also proved that the real estate has been continually under various attachments placed on it July 1, and July 20, 1908, and February 5, 1909, and a judgment lien for more than \$2,000.00 since September, 1909.

There was evidence that Herman Murphy was insolvent July 19, 1906, and on that date pretended to convey all his property to his wife, and has continued insolvent ever since.

There was evidence that July 19, 1906, and ever since he had such insolvent condition in contemplation when he made, and also when he recorded that deed. There was evidence that the said deed was made with the intent and purpose on the part of said

[33] Herman Murphy to delay and defraud his creditors, and that he had succeeded in delaying and defrauding his creditors ever since.

Fourteenth. The said District Court erred in failing and refusing to consider the evidence on the said issues referred to in the thirteenth assignment of error.

Fifteenth. The said District Court erred in not finding and reporting whether or not Herman Murphy had any right, title, estate, or interest, legal or equitable, in trust, or otherwise, in said real estate on March 24, 1913, when the same was sold on execution and the permitting of which sale is alleged as an act of bankruptcy because regardless of the validity of the deed dated July 19, 1906, the bankrupt might have, since that date, and before the sheriff's sale, acquired an equitable or other interest in said real estate or it might have been held on secret trust for him and his interest, whatever they were passed at the sheriff's sale and an act of bankruptcy was thereby committed.

Sixteenth. The said District Court erred in approving and affirming the report of the said referee wherein the said referee refuses to find the facts on the issues raised on the petition and answer and after making a statement of a few immaterial and irrelevant facts proceeds as follows:

“From the above state of facts the question is presented whether this Court shall entertain this petition.”

Whereas no such question was presented, no such question was open, as the District Court decided the

question August, 1913, more than eleven months before and not appeal was taken from that judgment, and the matter became *res judicata* and final and conclusive on said court, and all parties, and said District Court could not and did not send, or present any such question to said Referee, and the question was not then presented to said Referee [34] *and the question was not then presented to said Referee or said District Court.*

Seventeenth. The said District Court erred in approving and affirming the report of said Referee wherein the said referee states as follows: "My conclusion is that the petition herein either should be dismissed or further hearing stayed until the appeal aforesaid by William Miller from the judgment of the State Court can be determined." In that said Referee had no jurisdiction to make any such conclusion and the District Court could not and did not give him any authority to make any such conclusion or recommendation, or any conclusion whatever until he had *report* all the facts on the issues raised by the petition and the answer thereto.

Eighteenth. The District Court erred in approving and affirming the report of said referee in that no claim whatever was made to the real estate referred to in the petition, nor was there any adverse or other claim to said real estate presented by anyone other than said Herman Murphy.

Nineteenth. The said District Court erred in affirming said report of the Referee and denying said petition for adjudication and dismissing the proceedings because of each and all of the reasons

and errors hereinbefore set forth in the previous eighteen assignments of errors.

Dated San Francisco, Cal., Dec. 14, 1914.

Respectfully submitted,  
DANIEL O'CONNELL,  
Attorney for Petitioning Creditors. [35]

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[Style of Court, Title and Number of cause.]

### **Record on Appeal.**

#### I.

This was a petition in involuntary bankruptcy filed in the United States District Court for the Northern District of California, July 21, 1913, by James R. Ryan and Peter Bazinet of Madera County, State of California, and M. M. Corrigan and William Miller, both of the City and County of San Francisco, State of California, as three (3) judgment creditors of Herman Murphy of Berkeley, in the County of Alameda, State of California, who, it is alleged, was not a wage earner, or engaged chiefly in farming, or the tilage of soil, but is a person subject to be adjudged a bankrupt upon a creditors' petition, and contained the allegations as to residence of more than six (6) months, and that he owes debts to the amount of Four Thousand (\$4,000.00) Dollars and more.

The judgment of James R. Ryan and Peter Bazinet was recovered June 2, 1910, in the Superior Court of the State of California, in and for the County of Madera, on which a balance of \$540.52, with interest from June 24, 1910, at the rate of 7%

per annum, making in all \$644.56 due and unpaid at the time of filing the petition.

M. M. Corrigan alleged a judgment recovered May 14, 1913, in the Justices' Court of the City of Berkeley, County of Alameda, State of California, for the sum of \$100.00 and \$15.25 costs, all of which remained unpaid at the time of filing the petition.

[36]

William Miller alleged that he recovered a judgment against Herman Murphy in the Superior Court of the State of California, in and for the City and County of San Francisco, on December 6, 1910, for the sum of \$3,377.77 and \$1.00 was paid for execution, together with fees of the sheriff and his expenses; and that no part of the judgment was paid, and that the sum of \$3,909.76 was unpaid and owing at the time of filing the petition.

It is further alleged: "That according to their information and belief, and on their information and belief, that the whole number of creditors of the said Herman Murphy are less than twelve."

It further represented that "Herman Murphy was insolvent, and that within four months next preceding the date of filing the petition he committed an act of bankruptcy in that he did, heretofore, to wit, on the 24th day of March, A. D. 1913, suffer, and permit, while insolvent, a creditor to obtain a preference, through legal proceedings, and not having at least five days before a sale or final disposition of his property affected by such preference, vacated or discharged such preference, in that on said March 24, 1913, all the right, title, estate and interest which the

said Herman Murphy had in the real estate situated in Berkeley, in said county of Alameda, and State of California, bounded and described as follows": (and a description of the property follows):

Said petition further alleges as follows:

"Said real estate was duly attached on a writ of attachment issued in said action July 20, 1908, and again on the writ of execution issued on the judgment entered December 6, 1910, issued in the action of William Miller against Herman Murphy, and said sale was duly made on said execution by the sheriff of [37] said County of Alameda, on said March 24, 1913, to said William Miller, and said William Miller then and there received a certificate of said sale, which has been duly recorded in the office of the County Recorder of Alameda County."

The petition further alleges as follows:

"Said Herman Murphy, while insolvent, and very heavily indebted, on July 16, 1908, and prior thereto, and ever since, executed and afterwards, on June 22, 1908, caused to be recorded in the office of the County Recorder of the County of Alameda, a gift deed and deed of gift of the above-described real estate, conveying said property, or pretending to convey said property, from said Herman Murphy to his wife, said Ella M. Murphy, and said deed was so executed and recorded in contemplation of said insolvency, with the intent and for the purpose of hindering, delaying, cheating and defrauding the creditors of the said Herman Murphy, both the past, the present and future creditors of said Herman Murphy, and your petitioners, James R. Ryan and Peter Bazinet, and



William Miller were then creditors of said Herman Murphy and said Ella M. Murphy then and thereafter had notice and knowledge of the said intent and purpose, of said Herman Murphy, and participated in said intent and purpose, and in carrying it out, and there never was then or at any time thereafter any change in the possession or control of said property, and no consideration whatever was at any time paid for said pretended conveyance so recorded, and said conveyance was and is absolutely void and conveyed nothing to said Ella M. Murphy, and during all the times mentioned herein said Herman Murphy remained and continued to be, and is now, the real owner of said real estate, both at law and in equity.''

[38]

Said petition further alleged that on July 5, 1910, there was recorded in the office of the County Recorder of Alameda County, a purported and pretended deed of said real estate from said Ella M. Murphy to Progressive Investment Corporation, incorporators of which corporation were said Ella M. Murphy, Helen B. Murphy, her daughter, and C. E. King, a stenographer in the employ of said Herman Murphy, who were the only directors and trustees of said corporation; and on November 30, 1910, said corporation ceased to exist by authority of proclamation of the Governor and Secretary of State of California for nonpayment of corporation assessments and taxes; and alleged that no stock was ever issued and no certificates of stock ever issued by said corporation, and that no attempt had ever been made to wind up the affairs of the corporation, and the cor-

poration was a mere pretense and sham for the purpose of putting the record title of said property beyond the reach of the creditors of said Herman Murphy, and for the purpose of hindering, delaying, cheating and defrauding said creditors past, present and future, of said Herman Murphy, and that they were so hindered, delayed, obstructed, cheated and defrauded by the said conveyances; that the said attachments of the property on July 1, and July 20, 1908, and February 10, 1910, were all duly recorded in the office of the County Recorder, and that said King and Helen B. Murphy, Ella M. Murphy, Herman Murphy, and Progressive Investment Corporation had notice and knowledge of said attachments from the said dates that they were recorded, and that they also knew that said Herman Murphy was insolvent during all the time of the existence of the corporation; and also that they knew he was insolvent on June 22, 1908, and that he continued insolvent down to the filing of the petition. [39]

It alleged that the conveyance of the corporation recorder July 5, 1910, and the other conveyance of the property from Herman Murphy were void, and that the property of Herman Murphy continued subject to said execution sale, and prayed that said Herman Murphy be adjudged an involuntary bankrupt within the purview of said acts of bankruptcy.

The petition was signed and was duly verified.

## II.

Subpoena was duly issued and Herman Murphy duly appeared by his attorneys and filed his demurrer in the following language:

“Now comes Herman Murphy, respondent above named, and demurs to the petition in involuntary bankruptcy in the above-entitled matter, and for grounds of demurrer specifies:

That said petition does not state facts sufficient to constitute a cause of bankruptcy against said respondent.

WHEREFORE, respondent prays that his demurrer be sustained, with costs.”

The United States District Court heard the demurrer and ordered it overruled, and the defendant to file his answer within five (5) days.

Thereafter defendant filed his answer in the case, in which answer there was no denial of the allegation that the number of his creditors was less than twelve.

The answer admitted the judgments recovered by Ryan and Bazinet, and also by M. M. Corrigan, but alleged that there was an appeal taken from Corrigan's judgment, and that it was pending and undetermined in the Superior Court of the County of Alameda.

It also admitted the recovery of the judgment by William Miller as alleged and the issuing of an execution thereon, and that said execution was delivered to the sheriff of the County of Alameda, State of California, and that by virtue of said execution said sheriff of Alameda County did sell at the request of William Miller [40] a pretended interest of Herman Murphy, respondent herein, in and to that certain real property in the City of Berkeley, County of Alameda, State of California, described in said petition, and alleges that at the sale of said property

on said execution said William Miller purchased the pretended interest of said Herman Murphy in said property for the sum of \$150.00, and alleged that said \$150.00 reduced the amount of judgment that sum; and alleged that he was not the owner of the property, or any part thereof, at the time of execution sale, and denied that within 4 months prior to the filing of the petition he committed any act of bankruptcy; and denied that on the 24th day of March, A. D. 1913, or at any time, he suffered or permitted, while insolvent, a creditor to obtain a preference through legal proceedings, or at all; and alleged that at the time of said sheriff's sale on March 24, 1913, and for long time prior thereto, said Herman Murphy was not the owner of all right, or title, or estate and interest in the real property described; and alleged that at the time of the sale said property was not the property, or was any part thereof the property, of the said Herman Murphy; and denied that he exercised any acts of ownership over the property, or any part of the property.

The answer further denied that, while insolvent, or very heavily indebted, on July 16, 1906, or at any time prior, or since, he made, executed, or delivered to Ella M. Murphy, or caused to be recorded in the office of the County Recorder of Alameda County, a deed of gift of the property, but alleged that, while solvent, and not heavily indebted, he made, executed and delivered on July 19, 1906, a gift deed of the property to his wife, Ella M. Murphy; but denied that it was executed and recorded in the contemplation of insolvency; and denied that it was executed

and recorded with the intent or for the purpose of hindering, [41] delaying, cheating, or defrauding, or of hindering, or of delaying, or of cheating, or of defrauding his creditors, whether the creditors were past, or present, or future creditors; or for hindering or of defrauding the said James R. Ryan or Peter Bazin or William Miller, or all or any of them.

It also denied that Ella M. Murphy then or thereafter had notice or knowledge of said alleged intent or purpose of said Herman Murphy; and denied that she participated in the alleged intent or purpose, or assisted in carrying it out; and denied that there was not at any time thereafter any change in the possession or control of the property; and denied that there was no consideration whatever paid for said conveyance; and denied that it was absolutely, or otherwise, void; and denied that it conveyed nothing to Ella M. Murphy; and denied that Herman Murphy remained, or continued to be, or now is, the real owner of said real property, or any part thereof; and denied that no stock was subscribed for or issued by the Progressive Investment Corporation; and denied that the incorporation was a mere contrivance or any contrivance or sham for the purpose of putting the record title of said property in the name of a corporation and beyond the reach of his creditors, or for the purpose of hindering, delaying, cheating and defrauding any of his creditors, past, present or future; and denies that any of his creditors were thereby hindered, delayed, obstructed, cheated, or defrauded by the deeds so recorded June

22, 1908, and July 5, 1910; and denies that they were recorded with the intent and purpose to hinder, delay, obstruct, or defraud any of his creditors; and denies that any of the incorporation had any notice of the writs of attachments being recorded July 1, 1908, July 20, 1908 or February 10, 1909; and denies that no consideration was paid by the Progressive Investment Corporation for said [42] conveyance; and denies that the officers of the corporation knew that Herman Murphy was insolvent; and denies that he was insolvent on June 22, 1908, when the deed was recorded; and denies that he has continued insolvent down to the filing of the petition; and denies that the conveyance to the Progressive Investment Corporation, recorded July 5, 1910, was void; and denies that the property so conveyed continued to be, or now is, the property of Herman Murphy and subject to said execution sale or any other incumbrances. Said answer alleged as follows:

“Respondent denies that at the time of the conveyance of said property described in said petition to said Ella M. Murphy, wife of respondent herein, and at the time of the recording of said deed to the said Ella M. Murphy, on the 22d day of June, 1908, respondent herein was not indebted in any sum to James R. Ryan or Peter Bazinet, and that upon both of said debts respondent herein was solvent and able to pay all debts owed by him, including the sum of money due to said William Miller, petitioner herein.”

The answer prayed that the petition be denied and dismissed.

The answer was duly verified. After the filing of the answer, the petition and answer were duly referred to the Referee in Bankruptcy with instructions "To ascertain and report the facts and his conclusions therefrom on the issues joined by the answer to the creditors' petition herein."

Thereafter hearings were had before the Referee in Bankruptcy, and documentary evidence and oral testimony were produced by the petitioning creditors to prove that Herman Murphy was indebted to them in the amounts claimed to be due them in the petition, and that he was insolvent at the date of the alleged commission of the act of bankruptcy charged and at the date of the filing of the petition herein. The Referee found and reported that the amount owing [43] to the petitioning creditors at said dates exceeds the amount necessary to maintain the petition, and that at the date of the alleged commission of the act of bankruptcy charged and at the date of the filing of the petition herein, said Herman Murphy was insolvent. No exception was taken by said Herman Murphy to the referee's findings and report.

When at the outset of the hearing before the Referee, it became known to him that the property which is the subject of the alleged preference was adversely claimed, he stated to the parties that in his opinion this Court should not proceed to try the issues relating to such adverse claim. Counsel for the petitioning creditors desiring to present his case

as to the alleged fraudulent character of the transfers of the property referred to in the petition, which transfers were made by Herman Murphy to his wife Ella M. Murphy on July 16th, 1906, and which property was transferred to Ella M. Murphy to Progressive Investment Corporation, on July 5th, 1910, under the averments of the petition that such transfers were made with intent to hinder and delay and defraud the creditors of said Herman Murphy, the petitioning creditors were permitted by the Referee to take the testimony thereon, under the rule announced in the case of *In re Bartnett*, No. 5611 in this court, namely, that the Referee should not refuse to take evidence offered although he may decide it to be incompetent, irrelevant or immaterial. The Referee refused to consider this evidence, and made no findings thereon, for the reasons, first: Because the determination of the issues supported by such testimony, even if determined in favor of the petitioning creditors, would not establish the ultimate fact to be proven, to wit, that Wm. Miller will receive a preference by virtue of his purchase at the execution sale, because such determination would not be binding on the transferees who claim the property; and second: Because a State Court having first obtained [44] jurisdiction over such issues, in an action brought by one of the petitioning creditors to have the transfer set aside as fraudulent, it should be permitted to retain the same. Counsel for the petitioning creditors have sought to have incorporated in this statement on appeal a summary of such evidence. Such summary was excluded from



this statement for the reason that such evidence was not admitted in the case by the Referee as relevant, competent or material evidence, nor was such evidence considered relevant or material by the Court upon the hearing of the exceptions taken by the petitioner to the Referee's Report, and for the further reason that recital of such evidence is not at all essential to a determination by the Court of Appeals of the question of law involved in this appeal, such question being "did the Referee and the Court err, upon ascertaining that the property in question was adversely claimed, in not determining in this proceeding, and in advance of such determination by plenary action in the suit then pending in the Superior Court of Alameda County, whether or no the attaching creditor Wm. Miller did obtain a preference by legal proceedings by virtue of the attachment and execution sale complained of?"

On behalf of Herman Murphy alleged bankrupt, the Referee admitted in evidence to show an adverse claim to the property, and the fact that such claim was already the subject of an action in the State Courts, a judgment-roll in the case of Wm. Miller one of the petitioning creditors herein against Herman Murphy, the alleged bankrupt herein, Ella M. Murphy, Progressive Investment Corporation et al., in the Superior Court of the State of California, in and for the County of Alameda. The complaint in said action was filed March 28th, 1912, and the plaintiff alleges therein that said William [45] Miller on July 1, 1908, commenced an action against Herman Murphy in the Superior Court of the State of

California, in and for the City and County of San Francisco, to recover the several sums of money due him from said Herman Murphy; that on July 20, 1908, in said action, the sheriff of the County of Alameda, duly attached certain real property in the County of Alameda, (the complaint describing the property, including the property referred to in the petition in bankruptcy herein); that William Miller recovered judgment in said action against Herman Murphy for the sum of \$3377.77, and that no part thereof has been paid; that at the time Herman Murphy incurred the indebtedness to William Miller, said Herman Murphy was the owner of said real property in the County of Alameda California, (the complaint described the property which includes the property referred to in the petition in bankruptcy herein, and against which the attachment aforesaid had been levied); the complaint then sets out the facts concerning the conveyance of said property by said Herman Murphy to his wife, Ella M. Murphy, and the conveyance of the same by her to Progressive Investment Corporation, and alleges that such conveyance were made with intent to defraud plaintiff William Miller. Said complaint sets out substantially the same facts in regard to said transfers as are alleged by the petitioners creditors herein, respecting the fraudulent character of said transfers. The plaintiff prays that said conveyances be adjudged fraudulent and void as to the plaintiff, and that said property be sold and the proceeds be applied tot he claims of the plaintiff. An answer was filed to the complaint by Herman Murphy, Ella M.

Murphy, and Progressive Investment Corporation. Answers were also filed by other defendants. The answers denied generally and specifically the allegations of the complaint. [46]

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**[Order Settling Statement for Transcript on Appeal.]**

The case was tried before Honorable Everett J. Brown, and findings of facts therein filed and judgment entered by said court on April 3, 1913. It was ordered, adjudged and decreed in said action "that plaintiff take nothing by this action." The judgment of said court found from the facts as a conclusion of law "that the directors or trustees of the defendants' Progressive Investment Corporation, in office at the date of the forfeiture of the charter thereof, as trustees for the creditors and stockholders thereof, are the owners of all the real property hereinbefore described in finding VIII hereof situate at Berkeley, Alameda County, California, subject, however, to said mortgage described in finding XXIV hereof." The property described in finding VIII in said action includes the property described in the petition in bankruptcy herein.

An appeal from the judgment aforesaid was duly take by William Miller.

The foregoing is settled as the statement for transcript on appeal herein, this 22d day of June, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jun. 22, 1915, at 5 o'clock and 20 min., P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [47]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record on Appeal.]**

I, W. B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 47 pages, numbered from 1 to 47 inclusive, to contain full, true, and correct transcript of certain records and proceedings, in the matter of Herman Murphy, in Bankruptcy, No. 8,196, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praeceptum" (a copy of which is embodied in this transcript) and the instructions of Daniel O'Connell, Esq., Attorney for Petitioning Creditors and Appellants herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Twenty-six Dollars and Seventy Cents (\$26.70), and that the same has been paid to me by the Attorney for the Appellants herein.

Annexed hereto is the original Citation on Appeal issued herein, pages 49, 50 and 51.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court.

this 2d day of Aug., A. D. 1915.

[Seal]

W. B. MALING,

Clerk.

By T. L. Baldwin,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled  
5/2/15. T. L. B.] [48]

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[**Citation on Appeal (Original).**]

*In the United States Circuit Court of Appeals, for  
the Ninth Circuit in the Northern District of  
California.*

The United States of America,  
Ninth Judicial Circuit,—ss.

To Herman Murphy Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit in the Northern District of the State of California, to be holden at the City of San Francisco, in said district, on the 14th day of January next, pursuant to a petition on appeal and assignment of error filed in the clerk's office of the District Court of the United States for the Northern District of California, First Division, in the matter of Herman Murphy, to show cause, if any there be why the judgment and decree in said cause affirming and confirming the report of the referee and denying the creditors' petition to adjudge said Herman Murphy a bankrupt and dismissing said petition and bankruptcy proceedings should not

be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. M. T. DOOLING, Judge of said District Court, this 14 day of December, in the year of our Lord one thousand nine hundred and fourteen, and of the independence of the United States of America the one hundred and thirty-eight.

M. T. DOOLING,

United States District Judge. [49]

[Endosed]: 8196. In the United States Circuit Court of Appeals, for the Ninth Circuit in the Northern District of California. Citation on Appeal in Bankruptcy. At 3 o'clock and 30 min. P. M. Filed Dec. 14, 1914. W. B. Maling, Clerk. By C. W. Calbreath' Deputy Clerk. [50—51]

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[Endorsed]: No. 2632. United States Circuit Court of Appeals for the Ninth Circuit. James R. Ryan, Peter Bazinet and William Miller, Petitioning Creditors, Appellants, vs. Herman Murphy, Appellee. In the Matter of Herman Murphy, Bankrupt. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed August 2, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States District Court for the Northern  
District of California, First Division.*

In the Matter of HERMAN MURPHY, Involuntary  
Bankrupt.

**Order Extending Time [to January 21, 1915, to File  
Statement of Evidence and Praecept, and Ex-  
tending Time to February 1, 1915, to File Rec-  
ord and Docket Case in Appellate Court].**

Upon application of Daniel O'Connell, Esquire,  
solicitor for petitioning creditors and appellants, and  
for good cause shown,

IT IS HEREBY ORDERED that the time within  
which said petitioning creditors and appellants may  
file their condensed statement of the evidence, and  
praecept on appeal in the office of the clerk of this  
Court is hereby extended to and including January  
21st, A. D. 1915, and it is FURTHER ORDERED,  
that the time within which said petitioning creditors  
and appellants may file the record on appeal and  
docket the case with the Clerk of the United States  
Circuit Court of Appeals for the United States Cir-  
cuit Court of Appeals for the Ninth Circuit is hereby  
extended to and including the 1st day of February,  
A. D. 1915.

Done in open court this 11th day of January, A. D.  
1915.

WM. C. VAN FLEET,  
U. S. District Judge.

[Endorsed]: No. 8196. In the United States Dis-  
trict Court for the Northern District of California,

First Division. In the Matter of Herman Murphy, Involuntary Bankrupt. Order Extending Time. No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Feb. 1, 1915, to File Record thereof and to Docket Case. Filed Jan. 14, 1915. F. D. Monckton, Clerk.

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*In the United States District Court for the Northern District of California, First Division.*

In the Matter of HERMAN MURPHY, Involuntary Bankrupt.

**Order Extending Time [to February 1, 1915, to File Statement of Evidence and Praecept, and Extending Time to March 1, 1915, to File Record and Docket Case in Appellate Court.]**

Upon application of Daniel O'Connell, Esquire, solicitor for petitioning creditors and appellants, and for good cause shown,

IT IS HEREBY ORDERED that the time within which said petitioning creditors and appellants may file their condensed statement of the evidence and praecipe on appeal in the office of the clerk of this Court is hereby extended to and including February 1st, A. D. 1915, and,

IT IS FURTHER ORDERED that the time within which said petitioning creditors and appellants may file the record on appeal and docket the case with the clerk of the United States Circuit Court of Appeals for the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to



and including the first day of March, A. D. 1915.

Done in open court this 19 day of January, A. D. 1915.

M. T. DOOLING,  
U. S. District Judge.

[Endorsed]: In the United States District Court for the Northern District of California, First Division. In the Matter of Herman Murphy, Involuntary Bankrupt. Order Extending Time.

No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to March 1, 1915, to File Record thereof and to Docket Case. Filed Jan. 19, 1915. F. D. Monckton, Clerk.

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*In the United States District Court for the Northern District of California, First Division.*

In the Matter of HERMAN MURPHY, Involuntary Bankrupt.

**Order Extending Time [to March 30, 1915, to File Statement of Evidence and Praecept, and to File Record and Docket Case in Appellate Court].**

Upon application of Daniel O'Connell, Esquire, solicitor for petitioning creditors and appellants, and for good cause shown,

IT IS HEREBY ORDERED that the time within which said petitioning creditors and appellants may file their condensed statement of the evidence, and praecipe on appeal in the office of the clerk of this

court is hereby extended to and including March 30, A. D. 1915, and,

IT IS FURTHER ORDERED that the time within which said petitioning creditors and appellants may file the record on appeal and docket the case with the Clerk of the United States Circuit Court of Appeals for the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including the 30th day of March, A. D. 1915.

Done in open court this 30 day of January, A. D. 1915.

M. T. DOOLING,  
U. S. District Judge.

[Endorsed]: In the United States District Court for the Northern District of California, First Division. In the Matter of Herman Murphy, Involuntary Bankrupt. Order Extending Time.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Mar. 30, 1915, to File Record Thereof and to Docket Case. Filed Jan. 30, 1915. F. D. Monckton, Clerk.

*In the United States District Court for the Northern  
District of California, First Division.*

In the Matter of HERMAN MURPHY, Involuntary Bankrupt.

**Order Extending Time [to May 1, 1915, to File Statement of Evidence and Praeipce, and to File Record and Docket Case in Appellate Court].**

Upon application of Daniel O'Connell, Esquire, solicitor for petitioning creditors and appellants, and for good cause shown,

IT IS HEREBY ORDERED that the time within which said petitioning creditors and appellants may file their condensed statement of the evidence, and praecipce on appeal in the office of the clerk of this court is hereby extended to and including May 1, A. D. 1915, and,

IT IS FURTHER ORDERED that the time within which said petitioning creditors and appellants may file the record on appeal and docket the case with the Clerk of the United States Circuit Court of Appeals for the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including the 1 day of May, A. D. 1915.

Done in open court this 29 day of March, A. D., 1915.

M. T. DOOLING,  
U. S. District Judge.

[Endorsed]: In the United States District Court for the Northern District of California, Fourth Division. In the Matter of Herman Murphy, Involuntary Bankrupt. Order Extending Time.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 1, 1915, to File Record Thereof and to Docket Case. Filed Mar. 2, 1915. F. D. Monckton, Clerk.

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*In the United States District Court for the Northern District of California, First Division.*

No. 8196.

In the Matter of HERMAN MURPHY, Involuntary Bankrupt.

**Order Extending Time [to May 3, 1915, to File Statement of Evidence and Praecept, and to File Record and Docket Case in Appellate Court].**

Upon application of Daniel O'Connell, Esquire, solicitor for petitioning creditors and appellants, and for good cause shown,

IT IS HEREBY ORDERED that the time within which said petitioning creditors and appellants may file their condensed statement of the evidence, and praecipe on appeal in the office of the clerk of this court is hereby extended to and including May 3, A. D. 1915, and,

IT IS FURTHER ORDERED that the time within which said petitioning creditors and appellants may file the record on appeal and docket the

case with the Clerk of the United States Circuit Court of Appeals for the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including the third day of May, A. D., 1915.

Done in open court this 30 day of April, A. D., 1915.

M. T. DOOLING,  
U. S. District Judge.

[Endorsed]: No. 8196. In the United States District Court for the Northern District of California. In the Matter of Herman Murphy, Involuntary Bankrupt. Order Extending Time. Daniel O'Connell, Solicitor for Petitioning Creditor, 942-944 Pacific Bldg., San Francisco, Cal. Herman Murphy, Pro se.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order. Under Rule 16 Enlarging Time to May 3, 1915, to File Record Thereof and to Docket Case. Filed Apr. 30, 1915. F. D. Monckton, Clerk.

*In the United States District Court for the Northern District of California, First Division.*

No. 8196.

In the Matter of HERMAN MURPHY, Involuntary Bankrupt.

**Order Extending Time [to August 2, 1915, to File Record and Docket Case in Appellate Court].**

Upon application of Daniel O'Connell, Esq., soli-

citor for petitinuing creditors and appellants, and it appearing that on June 22, 1915, the statement on appeal was approved and signed by the Judge of this court and that the clerk of this court will not have the copies ready for delivery to the clerk of the United States Circuit Court of Appeals before August 1, 1915, and for other good cause appearing,

IT IS FURTHER ORDERED that the time within which said petitioning creditors and appellants may file the record on appeal and docket the case with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including the 2d day of August, A. D., 1915.

Done in open court this 15th day of July, A. D., 1915.

WM. C. VAN FLEET,  
U. S. District Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to—to File Record Thereof and to Docket Case. Filed Jul. 5, 1915. F. D. Monckton, Clerk.

No. 2632. United States Circuit Court of Appeals for the Ninth Circuit. Orders Under Rule 16 Enlarging Time to Aug. 2, 1915, to File Record Thereof and to Docket Case. Refiled Aug. 2, 1915. F. D. Monckton, Clerk.